

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA MARIE SIMEONE, Personal	:	
Representative of the Estate of Albert Francis	:	
Simeone, Jr., Deceased, and THERESA MARIE	:	CIVIL ACTION NO. 02CV4852
SIMEONE, In Her Own Right, and	:	
MARY ANN LENGYEL, Personal	:	
Representative of the Estate of George Lengyel,	:	
Deceased, and MARY ANN LENGYEL,	:	JURY TRIAL DEMANDED
In Her Own Right	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BOMBARDIER-ROTAX GmbH, et al.	:	
	:	
Defendants.	:	

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE
OPINIONS OF OFFICER JOSEPH YATSKO AND HANDWRITTEN NOTES**

Defendants BRP-Rotax GmbH & Co. KG f/k/a Bombardier-Rotax GmbH & Co. KG and Bombardier Inc. (collectively herein, "Defendants") submit the following Opposition to Plaintiffs' motion *in limine* to exclude opinions of Officer Joseph Yatsko and handwritten notes:

Defendants incorporate by reference, their Memorandum of Law and Reply Memorandum of Law in connection with their motion for summary judgment.

Plaintiffs seek to exclude, (1) the opinions contained in Officer Yatsko's reports/notes (Exhibit "A"); and (2) handwritten notes (one (1) page, last page) contained within Officer Yatsko's reports/notes (Exhibit "B"). Plaintiffs seek to exclude Officer Yatsko's conclusions (which Plaintiffs refer to as "opinions"), claiming that they amount to expert opinion pursuant to

Fed. R. Evid. 702 and that Officer Yatsko is not a qualified expert. Plaintiffs contend that, at his deposition, “Officer Yatsko was...asked by Defendants to offer expert opinions on virtually every question in this case.” This assertion by Plaintiffs is baseless. At his deposition, Officer Yatsko was asked only to answer questions about the investigation relating to the accident which he conducted, an investigation which Plaintiffs do not dispute Officer Yatsko performed. Plaintiffs also seek to exclude one (1) page of handwritten notes (Exhibit “B”, last page) contained within Officer Yatsko’s reports/notes based on Fed. R. Evid. 803(8), which provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, *factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.*

First, Plaintiffs incorrectly assert that Defendants will attempt offer expert “opinions” of Officer Yatsko at trial. Defendants do not seek expert testimony from Officer Yatsko. In fact, Defendants will not seek to seek to elicit from Officer Yatsko that he concluded that “pilot error was the cause of the crash.” (Exhibit “A”). However, Defendants will seek to introduce the “records, reports, statements, or data compilations” and Officer Yatsko’s “factual findings” contained within the records, pursuant to Fed. R. Evid. 803(8)(C). At the time of the accident, Officer Yatsko was a member of the Jackson Township, Pennsylvania Police Department. Officer Yatsko was responsible for conducting an investigation in connection with the subject accident. The Rules of Evidence permit Officer Yatsko to testify about what his investigation

consisted of and the conclusions that he reached as a result of his investigation. Specifically, the Rules permit Officer Yatsko to testify about his “factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.” Fed. R. Evid. 803(8)(C). There is nothing whatsoever to indicate, and Plaintiffs have not offered any evidence, that Officer Yatsko’s sources of information lack trustworthiness. Therefore, the report (Exhibit “A”) should be admissible as an exception to the Hearsay rule. Fed. R. Evid. 803(8)(C)

Plaintiffs’ attempt to frame Officer Yatsko’s conclusions as “expert testimony” is another attempt by Plaintiffs to exclude relevant evidence. At trial Plaintiffs can ask Officer Yatsko questions about his work experience or any other question they desire and which is permitted by the Rules.

Plaintiffs also seek to exclude the handwritten notes that are contained within Officer Yatsko’s records (Exhibit “B”), which were assimilated in connection with his investigation of the accident. The notes contained within Exhibit B consist of two (2) pages of notes written by Officer Yatsko and one (1) page containing handwritten notes from an unknown source. Defendants do not contest Plaintiffs position concerning the one (1) page containing handwritten notes from an unknown source. However, it is Defendants’ position Officer Yatsko’s handwritten notes, which are part of his investigation records, are admissible under Fed. R. Evid. 803(8)(C). Since the handwritten notes are part and parcel of Officer Yatsko’s records of his investigation, they should not be excluded. Again, Plaintiffs can question Officer Yatsko about how the notes came to be in his records and the jury can make a credibility assessment of same.

Additionally, all of Officer Yatsko’s opinions and reports may be relied upon by Defendants’ experts in reaching their conclusions. Fed. R. Evid. 703 states, in pertinent part:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Clearly, based on Fed. R. Evid. 703, Officer Yatsko's opinions and reports may be relied upon by Defendants' experts because experts are permitted to base their opinions on information that is perceived by or made know to an expert. In the instant case, even though the information may be inadmissible for other purposes, Defendants' experts may rely on reports and documents prepared by a Police Officer in connection with an investigation, the kind of information that experts rely on all the time.

Based on the foregoing, the evidence that Plaintiffs seek to exclude should not be excluded and, pursuant to Fed. R. Evid. 803(8)(C)1, Defendants should be permitted to introduce Officer Yatsko's testimony and investigation records (including all pages containing handwritten notes) and his factual findings contained within. Further, Defendants' experts, pursuant to Fed. R. Evid. 703, should be permitted to rely on, and testify about, Officer Yatsko's investigation records.

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP
Attorney for Defendant BRP-Rotax GmbH & Co. KG

BY: /s/ Robert J. Kelly
Robert J. Kelly, Esquire
33 Washington Street – 18th Floor
Newark, N.J. 07102

And

By: Jonathan Dryer, Esq.
P.A. Attorney ID 34496
The Curtis Center-Suite 1130 East
Independence Square West
Philadelphia, PA 19106

Date: October 6, 2005

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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Plaintiffs,	:	
	:	
v.	:	
	:	
BOMBARDIER CORPORATION GmbH, et al.	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I, Christopher W. McClanahan, certify as follows:

I am an attorney with the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for BRP-Rotax GmbH & Co. KG f/k/a Bombardier-Rotax GmbH & Co. KG and Bombardier Inc.

I certify that the foregoing Opposition to motion *in limine* was forwarded to the United States District Court, Eastern District of Pennsylvania, pursuant to the direct filing system on this same date.

I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Christopher W. McClanahan
Christopher W. McClanahan

Dated: October 6, 2005

EXHIBIT A

#. 00-1538

COMPLAINT REPORT

Page No. 3
08/07/2000

COMPLAINT NUMBER -> 00-1538

Received by: JOSEPH YATSKO

Date/Time received: 07/22/2000 @ 12:49 How received: Radio dispatch

Time dispatched: 12:49 Time arrived: 12:52 Time cleared: 18:00

COMPLAINANT -> YCC

Address:

City:

State:

Zip:

Phone: (717

TYPE OF COMPLAINT -> Traffic accident

Nature of complaint T/O WAS DISPATCHED VIA PHONE BY YCC WHO WAS CONCERNED ABOUT PHONE CALLS THEY RECEIVED REGARDING A POSSIBLE PLANE DOWN APPROACHING THOMASVILLE AIRPORT

How handled: Officer dispatched

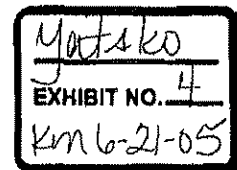
Location code: T Location dispatched: YORK AIRPORT

Officer dispatched: JOSEPH YATSKO

TIME ANALYSIS

Queue time	<time received to dispatched>	=	0 minutes
Travel time	<time dispatched to arrived>	=	3 minutes
Response time	<time received to arrived>	=	3 minutes
Action time	<time arrived to cleared>	=	308 minutes

Jackson Township Police Department



Page No.
08/07/2000

S	Date occurred: / /	Date reported: 07/22/200
T	Time occurred: 12:15 to 12:15	Time reported: 12:49
A	Officer dispatched: JOSEPH YATSKO	Jurisdiction: 66214
T	Reviewed by:	Date reviewed:
U		
S	Cleared by:	Date cleared:
	Case status:	Date closed:

V I C T I M ALBERT F SIMEONE JR
52 PUSEY MILL RD
COCHRANVILLE, PA 19330

Hospital:
Transported by:
Injury type: Death

DOB: 11/01/1948 Age at incident: 51
Sex: M Race: WHI Ethnicity: NONH
SSN: - -
Interviewed?
Statement taken? Resident?

Doctor:

Related offenses:

V GEORGE J LENGHYEL JR
I 3 CANNONEER CIRCLE
C CHADSFORD, PA 19317
T
I
M

Hospital:
Transported by:
Injury type: Death

DOB: 06/04/1956 Age at incident: 44
Sex: M Race: WHI Ethnicity: NONH
SSN: - - -
Interviewed?
Statement taken? Resident?
Doctor:

Related offenses:

P	WILLIAM LOSEY	Association: Witness
E	329 FAGGSMANOR RD	DOB: / / Age at incident:
R	COCHRANVILLE, PA 19330	Sex: M Race: WHI Ethnicity: NONH
S		SSN: - -
O		
N	Interviewed?	Statement taken?

P WILLIAM MILLER
E 400 AIRPORT RD
R NEW CUMBERLAND, PA 17070
S (717) 774-8271
O
N Interviewed? Statement taken?

Association: Other
DOB: / / Age at incident:
Sex: M Race: UNK Ethnicity: UNK
SSN: - -

Jackson Township Police Department

Sequence: 01

INCIDENT SUPPLEMENTAL REPORT

Page No.
08/07/2000

#00-1538

PLANE DOWN IN CORNFIELD

Reported by: JOSEPH YATSKO
Reviewed by:Date reported: 07/22/2000
Date reviewed: / /

IT APPEARS, ACCORDING TO WITNESS'S, CALLS TO THE AIRPORT WERE MADE AT 1220 HRS, REGARDING A PLANE CRASH, NO INFO WAS TAKEN BY THE AIRPORT. HOWEVER, NO CALLER INFO WAS RECORDED. AN AREA OF KBS RD WAS GIVEN, EXTENDING THE SEARCH FOR MILES. AIRPORT OFFICIALS CONDUCTED THEIR OWN SEARCH PRIOR TO CALLING YCC.

I WAS DISPATCHED AT 1249 HRS, BY YCC. UPON ARRIVAL AT 1252 HRS, I MET WITH AIRPORT & CIVIL AIR PATROL PERSONNEL, AS WELL AS PILOT WILLIAM LSOEY WHO EXPLAINED 2 PLANES, HIS INCLUDED, HAD DEPARTED FROM SE PENNA, ENROUTE TO THE CHAMBERSBURG AIR SHOW, STOPPING TO REFUEL SEVERAL TIMES ALONG THE WAY. THE AIRCRAFT RAN INTO SOME HEADWINDS, WHICH FORCED THEM TO REFUEL AT THOMASVILLE AIRPORT, UNEXPECTEDLY. MR LOSEY STATES HE WAS ABLE TO LAND, HOWEVER HE WAS CERTAIN THAT HIS COMPANIONS WERE NOT ABLE TO LAND.

AIRPORT MANAGER RICH FOESS ADVISED THE PLANE WAS FORCED INTO AT LEAST MISSED APPROACH DUE TO COMPLICATIONS AT THE AIRPORT AND HAD TO CIRCLE EAST, THEN SOUTH TO LINE UP FOR ANOTHER LANDING. IT NEVER RETURNED. I ASKED YCC TO HAVE FIRE DEPARTMENTS RESPOND TO ASSIST IN THE SEARCH AND THE AIRPORT HAD SEVERAL PLANES LOOKING. DUE TO CROP HEIGHT AND LACK OF MANPOWER, I DID REQUEST A HELICOPTER ASSIST FROM PA STATE POLICE.

THE HELICOPTER WAS ABLE TO FIND THE PLANE W/I MINUTES OF ITS ARRIVAL. EMS ARRIVED AT THE CRASH SITE WITH MYSELF AND CONFIRMED 2 FATALITIES. T/O DID SECURE THE SCENE FOR THE CORONER'S ARRIVAL. NTSB & FAA OFFICIAL INVESTIGATIONS CONTINUE BY THOSE DEPARTMENTS.

THE AIRCRAFT WAS IMPOUNDED TO OLD FORGE BY THE SAME FOR FAA OFFICIALS. THEY MAY HAVE ISSUES WITH THE REGISTRATION, CLASSIFICATION AND PILOTING OF THIS SMALL 2-SEAT AIRCRAFT, TAIL # A10AFS. SHOULD THIS AIRCRAFT BE LABELED OR CLASSED AS AN ULTRALIGHT, THE INVESTIGATION WILL BE ASSUMED BY THIS DEPARTMENT AND WE WILL CLOSE OUT SAME. IF IT IS DETERMINED THE AIRCRAFT IS AN AIRPLANE, NTSB WILL ASSUME THAT RESPONSIBILITY.

Jackson Township Police Department

Sequence: 02

INCIDENT SUPPLEMENTAL REPORT

Page No. 1
08/07/2000

00-1538

PLANE DOWN IN CORNFIELD

Reported by: JOSEPH YATSKO
Reviewed by:Date reported: 07/25/2000
Date reviewed: / /

I, OFFICER YATSKO, HAVING BEEN ASSIGNED BY CHIEF RUFF TO COMPLETE AN INVESTIGATION OF THE ULTRA LIGHT TRAINING AIRCRAFT (A10AFS) HAVE FORMED AN OPINION AS TO THE CAUSE OF THE CRASH. DUE TO MY LACK OF KNOWLEDGE OF AIRCRAFT PILOTING IN GENERAL, I WAS FORCED TO RELY HEAVILY ON OUTSIDE AGENCIES TO PIECE TOGETHER THE FACTS OF THIS ACCIDENT WHICH CLAIMED 2 LIVES.

PHYSICAL EVIDENCE, WHICH HAS BEEN RECORDED, AS WELL AS WITNESS TESTIMONY AND CITIZEN INFORMATION, WOULD SUGGEST THE ULTRA LIGHT DID COME INTO CONTACT WITH POWER LINES SOUTHEAST OF THE RUNWAY, AFTER HAVING TO ABORT ITS LANDING ATTEMPT DUE TO CIRCUMSTANCES BEYOND THE PILOT'S CONTROL AT THE YORK AIRPORT.

SCUFF MARKS BEGINNING ON THE WINDSHIELD FORMED IN A LINEAR MANNER CONSISTENT WITH POWER LINES, DID TRAVEL UP OVER THE ENCLOSED COCKPIT, BENDING AN EXPOSED ANTENNA AND SCARRING THE LEFT WING. THESE MARKS ARE ALL IN LINE AND SYMMETRICAL AS IF THE PLANE WAS TURNING WITH ITS RIGHT WING DIPPED DOWN.

HOMEOWNERS AND LEASEES OF PROPERTY ON KBS RD AND SPRING FORGE PLAZA REPORT ELECTRICITY DISRUPTIONS AT APPROXIMATELY THE SAME TIME AS THE PLANE WOULD HAVE GONE DOWN. (SUPPORTED BY A STOPPED TIMEPIECE ON THE PLANE WHEN FOUND). INSPECTION OF THE POWER LINES REVEAL NO ORANGE BALLS CONNECTED TO THE POWER LINES, POSSIBLY LIMITING VISIBILITY, HOWEVER THERE WERE NO ADVERSE WEATHER CONDITIONS AT THE TIME OF THE PLANE'S APPROACH.

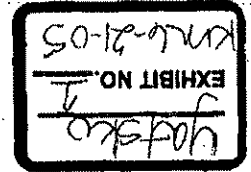
I WAS ALSO ON SCENE WHEN MEDICAL PERSONNEL DID ARRIVE AT THE CRASH SITE, AFTER HAVING BEEN FOUND BY PA. STATE POLICE HELICOPTOR. THE TWO OCCUPANTS WERE DECEASED AND, ACCORDING TO CORONER BARRY BLOSS, DIED INSTANTLY UPON IMPACT.

CHIEF RUFF HAS SINCE TURNED OVER ANY AND ALL PHYSICAL EVIDENCE TO FAMILY MEMBERS OF THE DECEASED, THUS HALTING MY INVESTIGATION. THERE IS NO REASON TO PURSUE ANY FURTHER FROM THE POLICE DEPARTMENT'S PERSPECTIVE, AS I DO NOT BELIEVE THESE DEATHS ARE IN ANY WAY SUSPICIOUS.

MY INVESTIGATION LEADS ME TO BELIEVE PILOT ERROR WAS THE CAUSE OF THE CRASH AND FATALITIES. I WOULD LIKE TO STRESS THAT THIS IS A LAY PERSON'S OPINION, IN THAT I HAVE NO FORMAL TRAINING IN THESE TYPES OF INVESTIGATIONS. I WAS IN THE PROCESS OF A MORE FORMAL INVESTIGATION AND MADE ARRANGEMENTS TO HAVE DIFFERENT PARTS OF THE AIRCRAFT SENT OUT FOR MECHANICAL INSPECTION. THIS IS NOW IMPOSSIBLE AS THE PLANE HAS BEEN RELEASED BY CHIEF RUFF.

Jackson Township Police Department

EXHIBIT B



Preliminary findings -
 1210 - fuel tank miss approach plane brakes burst.
 1215 - witnesses say electricity flashes off for
 1216-1220 witnesses say plane crashes and
 call airport.
 Airport launches its own investigation.
 Does not contact BCC.
 Bill Casey advises his travel companion
 are past due.
 1248 - BCC is advised.
 1249 - County Dispatches myself, I called for
 assistance in the search via fire Dept.
 1408 - Plane found by RSR helicopter.
 1430 - Rescued dead coroner.
 1530 - RSP IR unit begins photography
 - Investigation begins.
 - Fined plane together at oil forger
 Service station. The following are
 pertinent facts -
 - Scuff marks found on nose, windshield and
 canopy indicating the plane may have
 struck a power line.
 - Pieces of fiberglass found in fuel filters
 - Map indicates air route plotted for year
 Due to needs for fuel.

— ANTENNA Found to have Been Bent
in A MANNER Consistent with A linear
OBJECT PASSING over the Cockpit in
Contact with the PLANE.

— only 38 hrs on ENGINE (Run time)
ENGINE NOT SEIZED, MAINTAINED
Compression.

CHLO 1517 KBS Rd WITNESS

BROTHER. RONALD FRANCIS SR SIMONE

610 622 1060 PHONE/FAX

610 656 3111 CELL

BLUE/WHITE aircraft pulled out in front of

FAA - turbulent air in front of other plane

DASH RIGHT/

ACCID PROV.

TAPE AT AIRPORT.

EMT PEOPLE.

TROOP H ID UNIT

OVER WEIGHT

PART 103 (REGULATIONS)

NTSB -

AUG 10/21/900

OCCURRENCE

Airport manager - mowing

Airplane TAKING OFF NOT THAT CLOSE.

What ultra light ^{SAW} TAKING OFF - Doing 360° TURN

SHARP RIGHT TURN - STOPPED

AG ROTONS GOTTISBURG PA

WEATHER

PILOT INFO

WITNESS STATEMENTS.